



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 - against - :
 :
 PETER LESNIEWSKI, :
 :
 Defendant. :
-----X
VICTOR MARRERO, United States District Judge.

11 Cr. 1091 (VM)

ORDER GRANTING
CERTIFICATE OF
APPEALABILITY

By Decision and Order dated June 21, 2016 ("June Order," Dkt. No. 871), this Court denied Defendant Peter Lesniewski's ("Lesniewski") petition for resentencing with respect to his prison sentence pursuant to 28 U.S.C. Section 2255 ("Section 2255").¹ Lesniewski, by motion dated June 27, 2016, wishes to appeal from the June Order to the United States Court of Appeals for the Second Circuit. (Dkt. No. 873.) In order to take such appeal, Lesniewski requests that this Court issue a certificate of appealability pursuant to 28 U.S.C. Section 2253.

Rule 11(a) of the Rules Governing Section 2255 Cases in the United States District Court provides that "[t]he district court must issue or deny a certificate of

¹ In the June Order, the Court ordered additional briefing by the parties on the question of whether the amount of actual loss suffered by the United States Railroad Retirement Board ("RRB") and thus the restitution each defendant was sentenced to pay is altered by the alleged newly-discovered evidence.

appealability when it enters a final order adverse to the applicant . . . [,] [and] [i]f the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. Section 2253(c)(2)."

The Court is satisfied that the showing required by Section 2253(c)(2) has been made. Accordingly, the Court grants a certificate of appealability regarding the specific issue of whether Lesniewski is entitled to a resentencing with respect to his prison sentence in light of the alleged newly discovered evidence that, Lesniewski argues, shows that the RRB suffered little to no loss as a result of Lesniewski's role in the scheme of fraudulent claims for which Lesniewski was convicted.

ORDER

For the reasons stated above, it is hereby

ORDERED that the motion (Dkt. No. 873) of defendant Peter Lesniewski for a certificate of appealability of his judgment of conviction in this action is **GRANTED** as it relates to the issue described above.

SO ORDERED.

Dated: New York, New York
28 June 2016

A handwritten signature in black ink, appearing to read 'Victor Marrero', is written over a horizontal line.

VICTOR MARRERO
U.S.D.J.